

Judge	_____
Mag.	_____
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Issue	_____
Docketed	_____

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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WESTERN DIVISION  
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LOUIS MERRIWEATHER-PETITIONER

-VS-

JAMES ERWIN, WARDEN-RESPONDENT

CASE NO. C-1-02-369

JUDGE, SPIEGEL

MAGISTRATE JUDGE HOGAN

PETITION TO AMEND WRIT OF HABEAS CORPUS  
WITH NEW AND DISCOVERED EVIDENCE

Now comes Petitioner, Merriweather and respectfully request that this court grant leave to amend his writ of habeas corpus for reasons of new and discovered evidence, discovered through due diligence, this new and discovered evidence will give greater creditability to Merriweather's claims of constitutional violations during trial court proceedings, on ineffective assistance of counsel and subject matter jurisdiction.

(1) INEFFECTIVE ASSISTANCE OF COUNSEL:

This new and discovered evidence affirms that defend counsel "not only" pleaded Merriweather guilty of all counts of the Hamilton grand jury indictment without "benefit" of discovery; See, Kimmelman v. Morrison, 479 U.S. 365-385 (1986) ("Ineffective assistance of counsel, when counsel failed to conduct any pre-trial discovery and failed to file timely motion to suppress illegally seized evidence because unreasonable and below prevailing professional norms: See attached exhibits; But, also;

(2) DEFEND COUNSEL'S FAILURE TO REASONABLY TO INVESTIGATE EYEWITNESSES:

It was too defend counsel to reasonably investigate alleged eyewitnesses to ascertain the factual of alleged violations against Merriweather.

Brayant v.Scott,28 F.3d.1411-1418(5th Cir(1994)the court helded that"it is ineffective assistance when counsel failed to investigate alibi witnesses and eyewitnesses,because alibi witnesses known and eyewitnesses testimony important to prosecute case".There was no investigation on counsel's part before inducing Merriweather to plea guilty of all counts of the indictment.

Here the court should be reminded the in Merriweather's original writ he raised the issue of constitutional violation on the part of defend counsel,cause defend counsel failed to inform Merriweather in an oral direct manner of Merriweather's right [before and after plea)to timely notice of direct appeal,and that Merriweather and his mother at trial court asked counsel about filing direct timely appeal.Lozada v.Deeds,964 F.2d.956-959(9th Cir.1992)("Prejudice is presumed,for purpose of determining whether defendant was denied effective assistance of counsel,if it is established that counsel's failure to file notice of appeal was without defendant's consent").Merriweather is entitled to evidentiary hearing on ineffective assistance of counsel,when he claim he asked trial counsel to file notice of appeal and counsel did not.

### **(3)SUBJECT MATTER JURISDICTION:**

#### **Criminal Rule 3,COMPLAINT;provides;**

The complaint is a writtern statement of the essential facts constituting the offense charged.It shall also state the numerical designation of the applicable statute or ordinance.It shall be made upon"oath"before any person authorized by law to administer oaths.

#### **O.R.C'S §2935.03(B)(2);states in Part;**

The execution of any of the following constitutes reasonable grounds to believe that the offense alleged in the"statement"was committed and reasonable cause to believe that the person alleged in the"statement"to have committed the offense is guilty of the violation.

**(A)[W]ritten statement by a"person"alleging that an alleged offender has committed the offense.**

**§2935.05.AFFIDAVIT FILED INCASE OF ARREST WITHOUT WARRANT:**

(4)Provides in Part"When a person arrested without a warrant that person shall be taken before a counrt or magistrate having jurisdiction of the offense,and"shall file or cause to be filed an"affidavit"describing the offense for which the person was arrested.Such "affidavit"shall be filed either with the court or magistrate,or with the prosecuting attorney or other attorney charged by law with prosecution of crimes before such court and he"shall forthwith"file with such court or magistrate a"complaint"based on such affidavit.

**§2935.07;PERSON ARRESTED WITHOUT WARRANT SHALL BE INFORMED OF CAUSE OF ARREST:**

In part;"When an arrest is made without a warrant by an officer,he"shall"inform the person arrested of such officer's authority to make the arrest and the"cause of the arrest".Merriweather was never orally,directly informed of the cause of his arrest no the authority of the officer to make such arrest.on March 27,1997 at 1535 Pleasant St.in Cincinnati,Ohio within the county of Hamilton.

**§2935.09;ACCUSATION BY AFFIDAVIT TO CAUSE ARREST OR PROSECUTION:**

"In order to cause the arrest or prosecution of a person charged with committing an offense in this State,a peace officer,or a private citzen having knowledge of the facts,"shall file with the judge or clerk of courts of records,an **affidavit** charging the offense committed,or shall file "such affidavit"with the prosecution attorney,for the ourpose of having a"complaint filed"by such prosecuting.

**2935.10;PROCEDURE UPON FILING OF AFFIDAVIT OR COMPLAINT:**

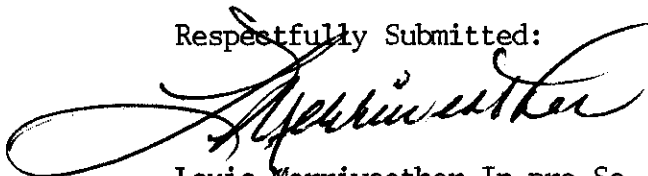
(A) Upon the filing of an affidavit or complaint as provided by section§2935.09 R.C.,if it charges the commission of a felony,such judge,clerk or magistrate,unless he has reason to believe that if it was "not"filed in good faith,or the claim is not meritorious,shall forthwith issue a warrant for the arrest of the person charged in the"affidavit".

**CRIMINAL RULE 4(E)(2);COMPLAINT:**

[One]arrested without a warrant having firat been issued shall be brought before the"Court having jurisdiction of the offense and a"complaint shall without **unnecessarry** delay be filed".

Upon request by Merriweather on 7/15/03, the Clerk of Courts of Hamilton county failed to provide Merriweather in Case No's. [MC#97CRA9740A and B-9702196] with copies of "affidavit or complaint with caused the arrest of Merriweather on March 27, 1997 in Hamilton county and his indictment from the Hamilton county grand jury, after almost 30 days the clerk of courts of records" could not "produce any copies of alleged affidavit or complaint sworn to by any person or persons, see attached exhibits. In fact the Clerk of Courts could only provide Merriweather with another copy of the appearance docket and plea, see exhibits dated 8/14/03. Merriweather would also like to remind the court, that these are very important documentations, which should have been provided to this honorable court under its "order to show cause" issued in the matter of this writ, further, to an unlettered person, such as Merriweather, it now appears beyond a doubt that in absence of proper procedure and in violation of Merriweather's Ohio and U.S. Constitutional rights, Merriweather was on March, 27, 1997, arrested, charged, and on April 2, 1997, indicted of criminally violating O.R.C. §2907.02(A)(1)(b) (4 counts) without the charging instrument of an affidavit or complaint, listing all the alleged elements of the alleged offenses, even Ohio's criminal rules provide "without the complaint or sworn affidavit there can be no charge of offense, this new and discovered evidence Merriweather should be granted an immediate evidentiary hearing. See, State v. Dowell, 108 Ohio App. 6.8, 155 N.E.2d.842; Key v. Vattier, 1 Ohio 132; Winn v. State, 10 Ohio 345; Allen v. State, 10 Ohio St. 287; Smith v. State, 12 Ohio St. 466; Mitchell v. State, 421 Ohio St. 383; Johnson v. State, 66 Ohio St. 59 and State v. Mullins, 705 N.E.2d.709(1997), 111 St.Ct.1693(1991); Hunter v. state of New Mexico, 916F.2d.595 at paragraph (9); Stae v. Brown, 442 N.E.2d.475; State v. Graig, (Mar.12, 1986) App.No.C-85044, unreported, City of New Albany v. Dalton, 661 N.E.1132(Franklin Co.1995); State v. Palider, 1987 WL 6964, No.1255(9th Dist.Ct.App.summit, 2-18-87); State v. Bretz, 1993 WL 334249, No.92-P-0008(11th Dist.Ct.App.Portage, 8-27-93); In State v. Robinette, 693 N.E.2d.305(Jackson 1997), the court held, "the basis of the complaint's function is to advise the defendant of the offense with which he is being charged, and to provide the basis for invoking the jurisdiction of the court" State v. Perry, 226 N.E.2d.104,; State v. Williams, (1996) 8 Ohio App.2d.135, 220 N.E.2d.837; [T]he haering is ordered in which the Petitioner is provided with opportunity to prove his allegations".

Respectfully Submitted:



Louis Merriwaether, In pro Se

I, Louis Merriweather, do hereby certify that a true copy of the foregoing amendment was forwarded to Mr. Jim Petro, at the Office of the Ohio Attorney General at 140 E. Town St, Columbus, Ohio, 1, on this 25<sup>th</sup> day of Aug 2003, by per-paid U.S. first class mail. 43215-6001



Sworn to and subscribed before me in my presence this 25<sup>th</sup> day of Aug 2003

Marta L B Hitchens  
NOTARY PUBLIC

Marta L. B. Hitchens  
Notary, State of Ohio  
License No. 5239  
Commission Expires 3/3/2004